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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,362	03/01/2002	Qi Jia	UNI19	7281

25871 7590 08/18/2003

SWANSON & BRATSCHUN L.L.C.
1745 SHEA CENTER DRIVE
SUITE 330
HIGHLANDS RANCH, CO 80129

EXAMINER

MELLER, MICHAEL V

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 08/18/2003

/ C

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .		Applicant(s)	
	10/091,362		JIA ET AL.	
	Examiner		Art Unit	
	Michael V. Meller		1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,7,22,24-27 and 32-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 7, 22, 24-27, 32-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1, 4, 7, 24-26 are rejected under 35 U.S.C. 102(a) as being anticipated by Nakajima et al., Krakauer et al., Kimura et al., Chi et al., or Chen et al.

The references all teach administering the claimed extract to a patient/host having a condition where the COX-2 enzyme needs to be inhibited (cancer, arthritis, asthma, etc.). Applicant argues that the references do not teach that the COX-2 enzyme needs to be administered, but that is what the references do. They administer the extract which inherently has the claimed compound in it and administered the claimed compound to a patient having such a condition.

Applicant asserts that the claimed extract and that of the references are not one and the same but how can they not be. The same plant source is used as applicant for the same purpose as what applicant uses it for.

Claims 1, 4, 7, 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Li et al. or Meybeck.

The references all teach administering the claimed extract to a patient/host having a condition where the COX-2 enzyme needs to be inhibited (cancer, arthritis, asthma, etc.). Applicant argues that the references do not teach that the COX-2 enzyme needs to be administered, but that is what the references do. They administer the extract which inherently has the claimed compound in it and administered the claimed compound to a patient having such a condition.

Applicant asserts that the claimed extract and that of the references are not one and the same but how can they not be. The same plant source is used as applicant for the same purpose as what applicant uses it for.

Claims 1, 4, 7, 24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Xinxian, Newmark et al. '995, Newmark et al. '346, Newmark et al. '416 or Kuhrts.

The references all teach administering the claimed extract to a patient/host having a condition where the COX-2 enzyme needs to be inhibited (cancer, arthritis, asthma, etc.). Applicant argues that the references do not teach that the COX-2 enzyme needs to be administered, but that is what the references do. They administer the extract which inherently has the claimed compound in it and administered the claimed compound to a patient having such a condition.

Applicant asserts that the claimed extract and that of the references are not one and the same but how can they not be. The same plant source is used as applicant for the same purpose as what applicant uses it for.

Claim Rejections - 35 USC § 103

Claims 1, 4, 7, 22, 24-27, 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakajima et al., Krakauer et al., Kimura et al., Chi et al., Chen et al., Xinxian, Newmark et al. '995, Newmark et al. '346, Newmark et al. '416, Kuhrts, Li et al. or Meybeck.

The references all teach administering the claimed extract to a patient/host having a condition where the COX-2 enzyme needs to be inhibited (cancer, arthritis, asthma, etc.). Applicant argues that the references do not teach that the COX-2 enzyme needs to be administered, but that is what the references do. They administer the extract which inherently has the claimed compound in it and administered the claimed compound to a patient having such a condition.

Applicant asserts that the claimed extract and that of the references are not one and the same but how can they not be. The same plant source is used as applicant for the same purpose as what applicant uses it for.

This is a RCE of applicant's earlier Application No. 10/091,362. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 703-306-3220. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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872-9306 for regular communications and 703-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

A handwritten signature in black ink, appearing to read 'M V Meller', with a long horizontal flourish extending to the right.

Michael V. Meller
Primary Examiner
Art Unit 1654

MVM
August 13, 2003